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**Attorney for Plaintiff**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**E. K. Wade**

**Plaintiff,**

**vs.**

**Elaine Chao, Secretary of Labor  
U.S. Department of Labor,**

**Defendants.**

**Case No. C 08-0001 JSW  
C 08-0021 JSW**

**PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION TO DISMISS**

**Date: May 9, 2008  
Time: 9:00 A.M.  
Courtroom 2, 17<sup>th</sup> Floor**

Pursuant to Civil L.R. 7-3(a) and 7-4(b), the Plaintiff requests the Court to deny  
Federal Defendant's Motion to Dismiss (that is scheduled for May 9, 2008).

**Dated this 28th day of March 2008**

*E.K. Wade*

**E. K. Wade (Pro Se)  
Attorney for Plaintiff  
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POINTS AND AUTHORITIES IN OPPOSITION OF MOTION  
TO DISMISS

An application for an order of Opposition to Defendant's Motion to Dismiss is appropriate herein.

This Court does have Subject Matter Jurisdiction; and Plaintiff has adequately stated his claims.

**C 08-0001 JSW:**

Plaintiff agrees that case number C 08-0001 JSW should be dismissed with prejudice.

**C 08-0021 JSW: (§ 1985 (3) claims)**

Plaintiff fully concurs with Defendant's logic and reasoning in Novotny and Vinson with respects to the instant case. In Great American S. & L. Assn. v Novotny, 442 U.S. 366 (1979), the Supreme Court held that a conspiracy to deprive a plaintiff of rights created by Title VII cannot form the basis for a cause of action under 42 U.S.C. § 1985(3). However, when Plaintiff's co-workers – Kathyann Batiste, Berlene Roberts, and Jesus Alvarez (who had no power, authority, or supervision to adversely subject Plaintiff to an adverse employment action); and under Respondeat Superior, conspired to lure Plaintiff into that conference room with the expressed purpose of demeaning and intimidating Plaintiff for exercising his Constitutional rights to freedom of speech to complain, which ultimately exacerbated Plaintiff's stress to the extent that he was forced to resign his position, Defendant became liable to Plaintiff for their conduct. "Title VII did not preempt public employees' actions against employer under civil rights conspiracy statute premised on violations of federal constitutional rights." Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; 42 U.S.C.A. § 1985((3). Black v. City and County of Honolulu, 112 F. Supp. 2d 1041 (D. Hawaii 2000)

Elements of a claim for conspiracy to deprive individual of equal protection of laws are: 1) existence of conspiracy to deprive plaintiff of equal protection of the laws; 2)

1 act in furtherance of conspiracy; and 3) resulting injury. **42 U.S.C.A. § 1985(3)** All of  
 2 those elements have been met.

3 For the reasons expressed in the aforementioned facts and case law, Plaintiff  
 4 believes that a jury would reason that Kathyann Batiste, Berlene Roberts, and Jesus  
 5 Alvarez could not have retaliated against Plaintiff; and Plaintiff's constitutional rights to  
 6 equal protection of the laws of freedom of speech were violated.

7 **C 08-0021 JSW: (§ 1983 claims)**

8  
 9 Title VII does not preempt action under § 1983 for violation of Fifth Amendment  
 10 and Fourteenth Amendment, U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1983; Civil  
 11 Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq. Roberts v. College of  
 12 the Desert, 870 F.2d 1411 (9<sup>th</sup> Cir. 1988) However, when Plaintiff's co-workers –  
 13 Kathyann Batiste, Berlene Roberts, and Jesus Alvarez (who had no power, authority, or  
 14 supervision to adversely subject Plaintiff to an adverse employment action); and under  
 15 Respondeat Superior, conspired to lure Plaintiff into that conference room with the  
 16 expressed purpose of demeaning and intimidating Plaintiff, during the course of  
 17 Defendant's investigation of Plaintiff's EEO complaints, for exercising his Constitutional  
 18 rights to freedom of speech to complain, which ultimately exacerbated Plaintiff's stress  
 19 to the extent that he was forced to resign his position, Defendant became liable to  
 20 Plaintiff for their conduct.

21 This is a violation of Plaintiff's right to protect his interests as persons who have  
 22 filed EEO charges under the Constitution. The Agency should have provided an  
 23 effective means to petition the government and provided equal protection to those who  
 24 invoke the EEO process as a means of exercising their statutory rights. Steele v.  
 25 Louisville & Nashville Railroad, 323 U.S 192 (1944)(holding that the law "imposes upon  
 26 the statutory representative of a craft at least as exacting a duty to protect equally the  
 27 interest of a member of the craft as the Constitution imposes upon a legislature to give  
 28 equal protection to the interests of those for whom it legislates"). Defendant's refusal

1 and deliberate, failure to process, investigate and properly resolve Plaintiff's EEO  
2 complaints against Defendant interfered with Plaintiff's substantive rights under the  
3 Constitution to equal protection of the law, due process and his right to petition for  
4 redress under the various civil rights statutes enacted by Congress. Plaintiff, as other  
5 federal employees, was required to proceed through the administrative process and  
6 seek redress there before litigating his grievances and EEO complaints in federal court.  
7 This Court would err by holding that Plaintiff had no Constitutional claims and that  
8 Plaintiff was not deprived/interfered of any substantive statutory or Constitutional right  
9 by the failure of this agency to enforce Plaintiff's statutory rights to administrative due  
10 process.

11 Elements of a claim for conspiracy to interfere with civil rights are: 1) that a right  
12 secured by the Constitution or laws of the United States was violated; and 2) that the  
13 alleged violation was committed by a person acting under the color of state law. West  
14 v. Atkins, 487 U.S. 42 (1988) All of those elements have been met.

15 For the reasons expressed in the aforementioned facts and case law, Plaintiff  
16 believes that a jury would reason that Kathyann Batiste, Berlene Roberts, and Jesus  
17 Alvarez could not have retaliated against Plaintiff; and Plaintiff's constitutional rights to  
18 due process of law were violated.

19 Dated this 28th day of March 2008

20 

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